

201

ORIGINAL

27

1-30-02
SC

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOAN D. TESCHÉ,
Plaintiff
v.
CNA INSURANCE COMPANIES, and
CONTINENTAL CASUALTY COMPANY,
Defendants
Civil Action No. 1:CV-01-0326
(Judge Caldwell)

FILED
HARRISBURG

JAN 28 2002

MARY E. DANIEL, CLERK
U.S. DISTRICT COURT
HARRISBURG, PA.

JOAN TESCHÉ'S AFFIDAVIT IN
SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT AND IN
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, the undersigned, hereby swear and affirm as follows:

1. I am the plaintiff in the above-captioned litigation. I was born on February 1, 1955 and worked for AMP Incorporated from May 2, 1988 to May 1997. I was terminated by my employer in May 1997, because I was unable to perform my job as a system procedure analyst.

2. I believe I am unable to work in any job due to my functional limitations and chronic pain. According to my treating physicians, my chronic pain results from several

abnormal conditions including spondylolisthesis, degenerative disk disease, and failed back surgery syndrome. I have had three back surgeries to attempt to relieve pain and disability. In March of 1992, I underwent a posterior lumbar fusion. At that time, a bone screw was inserted in my spine at L5-S1. In 1995, I underwent an anterior fusion of my lumbar spine in the area between L5-S1. In May of 1996, I had another surgery to remove the bone screw, because my spine had not fused properly. As a result of my back surgeries, I have scar damage from my initial fusion which causes chronic pain. I also have fibromyalgia, which is a connective tissue disease which causes arthritis-type complications. My medical condition and my extensive medications are described fully and accurately in my deposition transcript (and in other parts of the record).

3. During 1998 and 1999, I met with my treating orthopedic surgeon, Steven B. Wolf, M.D., and discussed whether I was disabled from any employment, including the four sedentary jobs identified by CNA's vocational consultant. I explained to Dr. Wolf my chronic pain and my need to alternate sitting and standing at least every 15 minutes. I also stated that I needed

to lie down on my back frequently during waking hours. Dr. Wolf stated that, in his opinion, I was disabled from all employment.

4. I was interviewed by CNA's vocational consultant in 1999. After reviewing the claim file in this litigation, it appears that the consultant's name was Tony Gulledge. It also appears that the telephone interview took place on June 9, 1999. In my opinion, Mr. Gulledge's report, which is described in the record at Exhibit A, CCC000141, does not adequately and accurately summarize my interview with Mr. Gulledge. I recall speaking with him for approximately 10 minutes, rather than the 30 minutes suggested by his report. Id.

Among other things, I explained to Mr. Gulledge that I could not physically perform any of the four sedentary jobs that he had identified, in part because I had to lie down for prolonged periods during the day. I also noted that my pain level was unpredictable and that the intensity of my pain increased whenever I performed even limited physical activity. I noted that any job would increase my pain and disability. I was familiar with my pain increasing even when I performed small tasks around my home.

5. From 1999 through the present, I have had to lay down on average between two and four hours per day. I usually wake up at approximately 7:00 a.m. In a typical day, I take my medication immediately after I wake up and it takes approximately one hour for the medication to take effect. Then it takes another hour for me to begin limited physical activities, including cleaning dishes and dusting. I generally have to lay down on my back from approximately 10:00 a.m. to 10:30 a.m. every morning. In a typical afternoon, I also have to lay down between approximately 2:00 p.m. and 4:00 p.m. After performing limited cooking and related activities, I generally lay down at 7:00 p.m. and fall asleep at approximately 9:00 p.m. Approximately four days per month, I am unable to perform any physical activities and must lie most of the day in bed or in a reclined lounge chair.

6. I have not actively looked for work because I do not believe I am physically capable of sustaining regular employment. In addition to my need to lie down for prolonged periods during my waking hours, I have other conditions which could prevent me from working including: problems concentrating;

memory loss; fatigue; blurred vision and numerous other side effects from my medical condition and any medications. The governmental agency, Office of Vocational Rehabilitation, informed me that they probably could not find me a job due to my chronic pain and other limitations.

7. CNA never provided my former attorneys, Steven Courtney and Clark DeVere, with information that they had requested during my appeal including: the CNA policy; the description of the jobs identified by CNA's vocational consultant; the consultant's report; and the CNA claim file.

8. The facts set forth herein are based on my personal knowledge. My lawyer, Bradford Dorrance, has assisted me in the preparation of this affidavit.

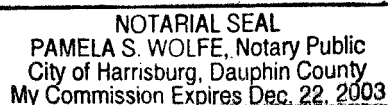


Joan D. Tesché

Sworn to and subscribed before me
this 28th day of January, 2002.



Notary



CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon the person(s) and in the manner indicated below:

First-Class Mail, Postage Prepaid
Addressed as Follows:

Michael J. Burns, Esquire
CHRISTIE PARABUE MORTENSEN YOUNG
1880 JFK Boulevard
10th Floor
Philadelphia, PA 19103-7424

(Attorneys for Defendants)

Dated: 1/28/02


Bradford Dorrance